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FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 969

RECONSTRUCTION FINANCE CORPORATION, PRUDENCE-BONDS CORPORATION, PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY, AND THE MARINE MIDLAND TRUST COMPANY OF NEW YORK, Petitioners

v.

PRUDENCE SECURITIES ADVISORY GROUP, INDEPENDENT PRUDENCE BONDHOLDERS COMMITTEE, *et al.*

RESPONSE OF METZ COMMITTEE, ITS SECRETARY AND COUNSEL TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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The Metz Committee

Adam Metz, Charles S. Oakley and Edward W. Smith (called the Metz Committee) represented 1,891 separate bondholders, holding $2,126,500 of bonds in the Sixth and Twelfth Series. They, their Secretary, and their counsel functioned from March 28, 1936 until the Reorganization Plan, approved January 18, 1938, was consummated by the delivery of the collateral in all Series to a new Corporate Trustee, under Supplemental Trust Agreement dated as of March 1, 1938. By order dated February 14, 1939, they were awarded as follows:

Committee	$1,500.00
Secretary	3,500.00
Counsel	35,000.00
Expenses	3,786.07
Total	$43,786.07

They assumed the major responsibility in the trial, condensed into 945 printed pages, upon which the Parity issue and the inequity of the General Plan were determined by the Special Master, who adopted, in large part, the findings proposed by this Committee, after four briefs and oral arguments on behalf of this Committee. Thereafter, they assumed major responsibility in refining the Debtor's Plan so as to bring it in harmony with law. The benefits to the estate directly traceable thereto total $4,850,000 (detailed in briefs below).

"It [the Metz Committee] performed valuable work through its counsel generally and particularly in the refining of the plans and on the parity issue." (Special Master, November 30, 1938.)

The Metz Committee and its counsel "took a leading part in the so-called parity question." (Prudence-Bonds Corporation, August 19, 1938.)

The Metz Committee generally and on the parity issue "rendered substantial and constructive services." (Jerome Thralls of Reconstruction Finance Corporation, August 20, 1938.)

The Metz Committee and its counsel "rendered useful services to the bondholders in both the parity question and the plans of reorganization." (McGrath & Cowin, Trustees for The Prudence Company, October 22, 1938.)

"Counsel for the Metz Committee bore the brunt of the parity litigation." (John R. Walsh as amicus curiae, February 8, 1940.)

Messrs. McGrath and Cowin further show that the Metz Committee "did obtain the cooperation of Central Hanover", which enabled the Trustees of the Debtor

"to maintain intact their servicing organization during the reorganization" and thereby "measurably aided the final accomplishment of the reorganization." (McGrath & Cowin, October 22, 1938; Central Hanover Bank & Trust Co., May 7, 1938.)

Prudence-Bonds Corporation

Prudence-Bonds Corporation, the Debtor, had $50,000 of paid-in capital, which it immediately loaned to The Prudence Company, Inc., its sole stockholder. With only this capital, it issued to the public bonds totaling $56,389,300, against real estate mortgages totaling that exact sum. The Prudence Company, Inc., guaranteed such bonds. The guarantor had $10,000,000 of capital, against which it not only guaranteed the aforesaid bonds, but also issued or guaranteed certificates or mortgages totaling an additional $71,505,148.

On January 2, 1932, the Minutes of The Prudence Company, Inc., indicated that it had withdrawn $1,650,000 from special funds which it could not pay back because it had free assets of only $1,200,000. On the same day, The Prudence Company, Inc., as guarantor, invoked the provision that the amounts due at maturity on the guaranteed bonds need not be paid until eighteen months after due date.

On June 8, 1932, The Prudence Company, Inc., borrowed $20,000,000 from Reconstruction Finance Corporation. The Reconstruction Finance Corporation did not acquire thereby any direct interest in the Debtor; nor did it acquire thereby any of the Prudence Bonds of the Debtor. Its interest is indirect merely, because it controls the stock of two companies (formerly affiliated) which hold some Prudence Bonds.

On June 29, 1934, Prudence-Bonds Corporation (the Debtor) petitioned for reorganization. As of December 31, 1935, it had outstanding bonds totaling $56,389,300, with

accrued interest of $7,024,391, against which it had the following in eighteen different Series:

Cash collateral	$1,979,105
Mortgages in good standing	3,950,587
366 defaulted mortgages, totaling	47,751,865

The Trust Agreements under which these mortgages were held contained no provisions permitting modification of the underlying mortgages; with the result that 152 administrative orders had to be made, after notice and hearing, for permission to foreclose, to sell, to vary the terms of the underlying mortgages, to accept deeds in lieu of foreclosure, to lease the property, to make alterations or repairs, to consent to plans of reorganization, and the like.

The Reorganization Plans

The Debtor's original plan of February 11, 1936 reduced the fixed interest of the bondholders from 5½%, to 3½%, cumulative if earned, plus 1% if earned non-cumulative; appropriated all the profits of servicing to the old stockholders; appropriated the profits made by purchasing bonds at a discount to the old stockholders; permitted the farming out of insurance and similar matters to privately owned affiliated corporations; limited the arrears of interest to amounts which might be collected from the over-due interest on the collateral; gave the old stockholders control of the Board and four out of seven voting trustees; limited the term of the bondholders' voting trustees to one year, with annual re-elections; reserved the entire equity and profits from handling and servicing of the collateral to the old stockholding group. These weaknesses were all corrected under the following circumstances.

On December 8, 1936, counsel for the Metz Committee argued the illegality of the plan before the Special Master;

and in the course of such argument, the Special Master indicated "that the then existing plans might not be approved even though all other except the Sixteenth Series and ourselves [Metz Committee] had withdrawn objections as aforesaid". (Bernstein, of counsel to Metz Committee, Sept. 6, 1938)

Between December 8, 1936 and January 4, 1937, continuous conferences were held by counsel for the Metz Committee, with counsel for the Debtor, for Reconstruction Finance Corporation, and for the 77B Trustees; with the result stated in the brief of Reconstruction Finance Corporation, as follows:

> "Following ten hearings on the Debtor's General Plan, conferences were held by representatives of the Debtor, its counsel, the Debtor's Trustees and their counsel, R.F.C., and the *Metz Committee,* as a result of which the Debtor promulgated its Amended General Plan of January 20, 1937 * * *. In all major respects the Debtor's General Plan of January 20, 1937 was adopted" by the Special Master.

POINT I

No abuse of discretion by the Special Master and the Trial Court are asserted against the allowance to the Metz Committee, its Secretary and Counsel.

> "Unlike appeals from other orders, appeals from compensation orders therefore normally involve only one question of law—abuse of discretion". (*Dickinson Industrial Site* v. *Cowan,* 84 Law Ed. Advance Opinions, 549, at p. 553)

The constructive services outlined herein preclude a charge that the allowances exceeded what was discretionary. "Service rendered to and benefits received by the

estate" (*Dickinson* case at p. 553) have been mathematically demonstrated and have been universally conceded even by the appellants.

In its brief below, the Reconstruction Finance Corporation claimed no abuse of discretion, saying merely: "It is submitted that the allowances to this [Metz] Committee and its counsel should be substantially reduced". A far cry from an abuse of discretion.

In *Pollak* v. *Port Morris Bank,* 257 N. Y. 287, leave to appeal, filed too late, was denied; the Court saying:

> "This record discloses no question of law which would induce the court to disregard the defect in the application to allow the appeal even if it had power to do so."

POINT II

The petition for certiorari discloses no important question of law which has not been authoritatively determined by this Court.

In the hearing before the Senate Committee on Judiciary, 74th Cong., 1st Sess., on S. 2176, on March 25, 1935, the Chief Justice said (p. 7):

> "Cases should not go to the Supreme Court of the United States simply because of the amount of money involved, because of the character of prominence of the parties, or because of the counsel. The question before the Supreme Court is, manifestly, the importance of the question of law involved, the importance of an authoritative determination by the tribunal invested with that very important function."

Every point urged by appellants has been authoritatively determined by this Court adversely to the appellants' contentions; as follows:

(a) Appeals from allowance orders are discretionary with the Circuit Court of Appeals, which should allow appeals only in case of a manifest abuse of discretion. (*Shulman* v. *Wilson-Sheridan Hotel Co.*, 301 U. S. 172; *Dickinson Industrial Site* v. *Coban*, 84 Law Ed. 549.)

(b) Where the rules or decisions of a Circuit Court of Appeals provide for methods of appeal which contravene the statute, such rules are void and afford no comfort to an appellant who relies thereon. (*Alaska Packers Assn.* v. *Pillsbury*, 301 U. S. 174.)

(c) A ministerial act, such as certifying a record on appeal (or, here, consolidating the records on appeal) is not the equivalent of the judicial act of allowing an appeal. The record in *Alaska Packers Assn.* v. *Pillsbury*, 301 U. S. 174, shows that the learned Solicitor General (now Mr. Justice) Reed urged that the certifying of a record by the court below was equivalent to the allowance of the appeal, and in his brief prayed that "the case be remanded to the court below with instructions to proceed to determine whether the appeal has, in fact, been allowed". This court denied such prayer by dismissing the appeal absolutely and without condition.

Likewise, in the case at bar, the Circuit Court of Appeals held that it had not, by consolidating the appeals, allowed the appeals (R. 973).

(d) The court below is without jurisdiction to entertain an allowance of an appeal when the petition therefor is not made within the time prescribed by law. (*Old Nick Williams Co.* v. *U. S.*, 215 U. S. 541.)

Conclusion

The petition for certiorari herein shows no merit in the main appeal and presents no question that has not been authoritatively determined by this Court.

In the court below no petition for appeal has yet been made; and particularly no petition has been filed showing any abuse of discretion in the allowances to the Metz Committee, its Secretary, and counsel.

Dated: New York, N. Y., May 27, 1940.

Respectfully submitted,

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